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trator had not charged his own indebtedness nor attempted to collect that of the debtor.

2. Complainant must make out his case, and prove the charges of his bill showing that he has the right to demand an account, in order to entitle him to an order of reference.

3. The premature entry of an order of reference was harmless where no account was taken thereunder.

4. Where an answer is used in support of the bill, the whole thereof must be taken together, and explanations given must be considered in connection with the admissions made.

5. A petition against an administrator and a debtor of the estate alleged that a third person had borrowed money from the decedent and repaid it to the administrator. The administrator, in his answer, denied the receipt of the money. The debtor alleged that the third party handed the money in question over to her, and that she gave it to decedent. The third party testified that he paid the money to the debtor, and that the allegation of the bill was an error. *Held* that, in the absence of an amendment to the bill, there could be no recovery of the sum of money in question.

6. An administrator cannot be charged with the amount of a debt belonging to the estate which he has never collected, and which has not been established against the debtor so that he can be deemed guilty of laches in having failed to collect it.

ATLANTIC COAST LINE R. CO. v. WATKINS.

June 15, 1905.

[51 S. E. 172.]

RAILROADS—FIRES—CONBUSTIBLE MATERIAL ON RIGHT OF WAY—DUE CARE—
APPEAL—REVIEW—QUESTIONS OF FACT—EVIDENCE—SUFFICIENCY OF EVIDENCE.

1. A railroad company owes the duty of keeping its right of way clear of combustible materials liable to ignition by sparks from engines.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, sec. 1673.]

2. Where a railroad company equips its locomotives with the best known appliances to prevent the escape of sparks, keeps the locomotives in good repair, and keeps its right of way clear of combustible materials, it is, as a general rule, not liable for fires caused by sparks from locomotives.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, secs. 1657-1676.]

3. Though an appellate court will not reverse the jury's finding on an issue of fact unless there has been a plain deviation from the evidence, nevertheless it will not hesitate to do so if satisfied that the evidence is plainly insufficient to support the findings.

4. That a fire started from a spark from a locomotive does not alone justify an inference that the fire originated on the railroad right of way.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, secs. 1709, 1710.]

5. In an action against a railroad company for damages alleged to have been caused by a fire originating on the right of way, evidence *held* insufficient to justify submission to the jury of the question whether the fire did so originate.

WILLIAM R. TRIGG CO. et al. v. BUCYRUS CO. et al.

June 15, 1905.

[51 S. E. 174.]

SALES—BAILEMENTS—DISTINCTION BETWEEN—CONDITIONAL SALES—RECORDING—CLAIMS AGAINST UNITED STATES—INTEREST—STIPULATION—EFFECT.

1. Plaintiff contracted to furnish certain pumping machinery, to be installed in the hull of a dredge being constructed by defendant. The contract further provided that plaintiff should install the machinery at its own expense; that defendant should afford the facilities of its yards for such installation, and furnish men and material for that purpose at cost; that defendant should keep the machinery insured for the benefit of plaintiff; and that it should pay one-third of the price when the machinery was delivered, one-third when it was installed on board the dredge, and the balance on completion of the test by the party for whom the dredge was being constructed. *Held*, that on delivery of the machinery, and payment of the first installment of the purchase price, there was a completed sale, and not a mere bailment, of the machinery to the defendant.

2. A contract by the United States with a shipbuilding company whereby all parts of machinery paid for by the United States under a specified system of partial payments became thereby the sole property of the United States is not a contract of conditional sale, required to be recorded by Va. Code 1904, sec. 2462, p. 1219.

3. No interest is allowable on claims against the United States unless the government has stipulated to pay interest, or it is given by express statutory provision.

4. Under Rev. St. U. S. secs. 3753, 3754 [U. S. Comp. St. 1901, p. 2530], providing that, whenever any property owned or claimed by the United States shall be attached or held for the security of any claim against such property, the Secretary of the Treasury may direct the Solicitor of the Treasury to cause a stipulation to be entered into for the discharge of such property, to the effect that upon such discharge the person asserting the claim shall be entitled to such rights to the property or its proceeds as he would have had if the possession had not been changed, a stipulation in such a case declaring that its object was to secure to all claimants the fullest possible protection and security did not entitle claimants to receive interest upon the proceeds of the property in the hands of the United States.